

**STATEMENT
OF
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U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
BEFORE THE
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OF THE
NATIONAL CONGRESS OF AMERICAN INDIANS
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My dear friends – the Clan Mothers, esteemed elders, and respected leaders of Indian Country – I come before you today in this time of great change, and ask that you might allow me to share some thoughts with you as we travel the path of life together.

I believe that to effectively address the many challenges that confront us now and those that lie ahead, we must first turn our focus inward and examine who we are, where we have been, and the long view of where we hope to be in seven generations.

We must, I believe, respond in a careful and thoughtful manner to each challenge, and try with all of our resources to never lose sight of the larger context in which we act.

As we look to the past, we see that the long view is something that has been passed down from generation to generation.

It may well be that it is the long view that has sustained you as a people through times of strife as well as times of bounty.

So let us take the long view as we look to the past, and apply the long view as we look to the future we seek to shape.

Your ancestors fought wars to preserve your sovereignty.

Today, the wars are of a different kind, but they are every bit as

important as the engagements of the past, because out of them your future as a people will be given expression.

Let us look at change as presenting opportunities and know that we have the power to effect how and when change comes about, and what change may look like.

The Interior Secretary's proposal for the establishment of a new Bureau of Trust Asset Management might serve as an example.

What you have said and what you have insisted upon is that you be involved in all government decision-making affecting your resources, your assets, your future and your lives.

It wasn't so long ago, that at least from the government's perspective, it was inconceivable that you would have a vital role to play in policy-making forums, or that your ideas would be looked upon as having value.

The government of days past did not acknowledge that you had expertise to bring to bear on assessing systemic problems and proposing system-wide change.

On the other hand, your relationship with the United States, from the very outset, was premised on your status as co-equal sovereigns, and what you are doing today is carrying that status forward in a manner that is meaningful in contemporary times.

Your fore-bearers would be proud, I think – they would likely be the first to recognize you as the modern-day warriors.

Wars are fought and warriors come forward because there is something so fundamental at stake that it requires protection and preservation.

It may be your values, or your way of life, and almost always, it will have something to do with your sovereignty.

Today you stand at a crossroads, and you will need to have clear vision – a large view and a long view that will inform how you meet and address what appear to be immediate challenges.

You will need to come to an understanding that the challenges you face reflect where you are – you are a strong and vital people with a strong sense of your destiny and your right to shape that destiny.

You will not allow others to shape your destiny for you.

This to me is the statement you are making.

This is one means of expressing your sovereignty.

You will seize the reins of control. You are not reluctant to assume the responsibilities entailed in doing so.

This is your day.

So how will you proceed?

You could take various proposals for change and view them in isolation from one another.

That might help you to focus on each event as discrete from another.

But there may be short comings in that approach.

Let's take the President's budget as one set of proposed changes.

When viewed from a system-wide, government-wide perspective, we see distinct themes and objectives upon which the President's budget is premised.

There is, for instance, an operating assumption in the budget, that the private sector can perform most government functions in a more efficient and cost-effective way.

The premise is that the provision of programs and services by non-federal entities, be they private enterprises, or state or tribal governments, will be more effective, and that over time, the size of the United States government and the cost of running America's national government can be pared down significantly.

Now we see how those principles are applied in the context of Federal-Indian affairs.

A proposal to turn over the operation of all Bureau of Indian Affairs schools – either to the tribal governments who want them, or to private sector enterprises.

A proposal to explore whether the provision of Indian health care services can be performed better by the private sector, or by state, regional or local governments.

A proposal to transition the construction of Indian health care facilities into the Office of the Secretary of Health and Human Services where the priorities for the construction of Indian hospitals and clinics will be merged with other national priorities.

In addition to the BIA schools, a proposal to shift the responsibility for the management of trust assets and resources, and the management of Indian trust funds out of the Bureau of Indian Affairs and into a new organizational structure.

Under the aegis of eliminating ineffective, duplicative and overlapping job training programs, a proposal to reduce job training programs for American Indian and Alaska Natives from 10 programs to one program.

A proposal to privatize the federal prisons, and a proposal to eliminate funding for tribal detention centers.

And to assure greater flexibility for management, a proposal to eliminate Indian preference.

In the days ahead, you will no doubt be examining each of these proposals and assessing whether they inure to the benefit of Indian Country.

In the framework of Federal-Indian relations, to the extent that these proposals provide greater support for Indian self-determination contracting and tribal self-governance compacting, they may do so.

On the other hand, we know that there are tribal governments that have elected not to contract or compact federal programs, and that may reserve their right never to do so.

What do these proposals mean for those native governments?

What is the nature of the trust relationship with the United States, if the relationship is carried out by private sector enterprises?

Perhaps the trust relationship does not depend upon what entity is the provider of programs and services, as long as the United States maintains some oversight of the performance by private providers, and holds them to the same fiduciary standards to which the government, itself, is held.

No one from the Administration has said that the government wants to get out of the business of administering Indian affairs – indeed the President has endorsed the Federal policy of native self-determination and self-governance.

So perhaps the proposals for change in the President's budget request just reflect the stream-lining of government and reduction-in-costs objectives that are being proposed government-wide.

If so, we must ask ourselves, as well as those in the Administration, what do these proposals have to do with the United States' trust responsibilities?

Will those responsibilities remain intact?

What is envisioned for the Bureau of Indian Affairs?

In the class action litigation regarding the management of individual Indian money accounts, there has been discussion of placing the management responsibility in the hands of a receiver.

Assuming for a moment that the court took that path, what would happen after a receiver has reconciled the accounts, fixed and restored the systems?

Some have suggested that by that time, there will be no Bureau of Indian Affairs to which to return the individual trust funds management responsibilities.

There have been a number of reports, some commissioned by the congress and others by the executive branch, which have concluded that much improvement is needed in the Bureau of Indian Affairs.

Tribal leaders have voiced similar concerns.

Is it time to take a modern-day look at the core functions of the Bureau in light of contemporary realities?

We have come a long way from the guardian-ward approach to the trust relationship, but the trust relationship endures and has evolved.

Today the beneficiaries of the trust are recognized as wise and knowledgeable in the ways of managing trust assets and resources – the notion of a Great Father in Washington who must be charged with caring for his wards is a relic of the paternalistic policies of the past that, happily, have been repudiated and rejected.

I have read the transcript of the weekend retreat in which the Interior Secretary, her Department officials, and the Tribal Task Force members participated earlier this month. There, some of the most fundamental and relevant questions were discussed.

What is the United States' trust responsibility?

What activities, functions, and responsibilities should be performed by the government?

What does the trust relationship entail?

Is it a relationship in which the beneficiaries of the trust can assume the responsibilities of the government in managing trust assets and resources?

What do tribal governments want in terms of programs and services, support, and assistance?

One tribal leader observed, "our relationship with the Bureau of Indian Affairs is a relationship with ourselves."

Another tribal leader stated, "the Department owes it to us to tell us what is wrong and what it is they are trying to fix, whether it is not enough money, not enough workers, etc. You need to tell us in very clear simple terms. We, the Tribes, owe it to them to tell them what we want."

A third tribal leader suggested, "it took two hundred years for the Government to bring us to the table, it won't take that long to repair it."

The Government, we are told, is under severe time constraints imposed by the court to act.

And yet, I think we could all agree that there have been too many quick fixes proposed and few of them have worked.

The tribal leaders, I think, have it right – you are coming to this challenge with a long view.

The long view counsels for a careful, well-thought-out plan of action and organization , and a schedule of implementation that will

effect permanent and positive results.

Notwithstanding its understandably high level of frustration, I hope the court will allow the administration and the tribal governments the time to work this out in the right way.

There is another, and I would suggest, even more serious challenge that we have been discussing and around which you have been organizing action, and that is the rulings of the United States Supreme Court.

As you may know, the Senate Committee on Indian Affairs will be holding the first in a series of hearings on this matter on Wednesday of this week [February 27, 2002], and I hope that all of you will be able to attend.

I have listened to a presentation by Professor Charles Wilkinson on the subject of your sovereignty and how it is being affected by the Court's rulings, and have come away convinced that we must act.

On Wednesday, Professor David Getches will be providing us with the results of his extensive research on the court's rulings as they affect Indian Country and your sovereignty.

He will be joined by another professor of law, and by a Senior Judge of the Ninth Circuit Court of Appeals.

We will hear as well from the Chief Justices of two Tribal Supreme Courts on the impact of the Court's rulings on tribal law enforcement and adjudications.

I am not a legal scholar, and thus I don't suggest that I understand the Court's apparent predisposition to find that your governmental powers and authorities have been diminished.

But as one who has served in the Congress for forty years, I can tell you that by its rulings, the Court has made a dramatic departure not

only from well-established principles of Federal Indian law, but from the statutes that have been enacted by the Congress and signed into law by Presidents over the last one hundred and sixty years.

And I firmly believe that if this trend in the Court's rulings continues, you may still have governments, but they will be governments in name only, because the exercise of your powers and authorities as sovereigns will have been stripped away.

I have known you long enough and well enough to know that this is not the destiny you intend to seek for your children and grandchildren and the seven generations to come.

Your ancestors took the long view, and it was to protect the values you hold dear, and your way of life, and your sovereignty that they stood and fought as great warriors.

Like those that came before you and upon whose shoulders you stand, I have no doubt that you will take up the mantle and fight the battles of your day.

For my part, though I am not a son of Indian Country, I have had the experience of standing and fighting to protect and preserve a way of life, and so, my dear friends, I pledge to you my commitment to work with you, and to always seek your guidance and counsel as we walk this path in life together.